

Dunstan Mlambo

LRC Oral History Project

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Int Dunstan, thank you very much for agreeing to be part of this LRC Oral History Project. We really appreciate it.

DM Thanks for inviting me.

Int Ok, I wondered whether we could start this interview by talking about your early childhood experiences and what were your experiences growing up under South Africa apartheid and...and what was the trajectory that led you to the legal profession as such?

DM I was born in Bushbuckridge situated in the province of Limpopo, but I grew up in Emjindini/Barberton in Mpumalanga province. That's where I had my early schooling: primary school and what we call secondary school or high school education. Life was basically uneventful because I mean it's in the backwoods of South Africa and one grew up with the societal views of what was happening there which was nothing to write home about. At that time my uncle, Johnson Phillip Mlambo was serving time in Robben Island for Pan Africanist and Poqo/APLA activities. He was away from me so the views that one would have learnt from him about the situation in the country were sort of away from one. My father has always been apolitical person, hence we just went through life, although one was aware now and then that things were not right. I basically started colliding with mainstream South African realities when I went to university, i.e. the University of the North colloquially known as Turfloop. That's when one became exposed to the politics of the country and what people were people were doing to sort of correct the situation. That's where I first heard of the LRC, when I was finalising my law degree, when a lawyer employed by the LRC came to speak to final year law students to tell them about employment prospects at the LRC. I couldn't come then because I had gone to university on a loan, bursary from one of the homeland governments (KaNgwane) which I had to repay by working there, so my friend Mpueleng Pooe, who was not constrained that way came here directly and he is the person who told me about what the LRC does, you know, and I applied to come here. In 1986, I was interviewed by Charles Nupen and Mahomed Navsa, amongst others and I was accepted to be a fellow in 1987.

Int I'm going to take you right back, because we've skipped your early childhood history. Tell me a little bit about what it was like growing up, what were some of the circumstances, educational issues, I'm sure your trajectory is quite fascinating for that alone.

DM I think I was trying to summarise it by saying I grew up in one of the backwoods of South Africa, Barberton, you know, nothing much happens there. So my father was a public servant, career public servant and my mother has never worked so she's always looked after us. My father was the sole income provider but what fascinated me about

him, my father, was he was studying towards a diploma. It was called Diploma Uris at the time.

Int It's a law degree in a way, isn't it?

DM It's a law diploma, yes. It only qualified one to become a prosecutor and magistrate in the homelands though. So I mean, Barberton is a town where the big jobs one would want to aspire to, would be either as a teacher or as a prison warder, because Barberton is notorious for having one of the big maximum security prisons in South Africa. So those were the main jobs, but it sort of put blinkers on one to say: I aspire to that. When you start trying to think out of that, it was like society would frown on you because you needed either a standard six or a standard eight, in today's terms, to go to that job, so if you thought beyond that, society would think like you're scared of taking a wife and getting a job, you know. So it was that type of scenario that one grew up with. But I got attached to books, at a very early age. I read a lot and far beyond my experience and beyond my worldview as developed by the society then. And that's when I decided to become a lawyer, when I read about the French Revolution; I think I was in standard seven, six at the time.

Int What inspired you about the French Revolution?

DM The French Revolution, the role played by lawyers during the Revolution about how they were powerful speakers, how they would inspire, persuade people to follow their views, and what their views were about society, how society was wrong and how it could be corrected. The things like that, at a very early age, so I caught up with those, with those sort of issues and that's when I said: Look, I want to become a lawyer. I went to high school, very good in debating, led the Debating Society, talking about society. Sometimes, because we were in a homeland government, one would stray and start criticising the homeland government situation, because I'm sure you know, it came up for much 'stick', you know, because it was viewed as something that was used by the government of the day to discredit the exiled movements, you know. So one would end up criticising them, you know, and one would always look forward to that particular evening, when one would listen to Radio Freedom, you know. The ANC broadcast from Zambia, we listened to that, you know, but one had to be very secretive about it because if the authorities got to hear about it, one would have been in trouble. So I think that's basically one of the formative years. But one thing that stuck out where I got no answers, was I knew I had an uncle, Johnson Mlambo, who was younger than my father and every time I asked my father, I said: Look, these books, Johnson Mlambo, who is he? Where is he? And my father said, look, you're still young, you know. Until I got a letter from him in 1979 I think when I was in matric.

Int From your uncle? From Robben Island?

DM From my uncle in Robben Island. And my father just came home one day and said: You've got a letter. So I look at this letter and the first thing that caught my attention was this stamp: Robben Island Prison. I got a shock. I said: What have I done now?

He said: Open it and read it. I read this letter; it came from someone who knew me, who I've never met. He said: How old are you now? You must be this age, what standard, what are your interests? And then, that's when he told me about him. He said: He's your uncle. He's in Robben Island for sabotage. You'll grow up; you'll learn to know about these things. So I started corresponding with him. My first letter must have got him into trouble.

Int You asked him: Why?

DM I asked him why and I asked him about the 1976 riots and whatever and what his view was and whatever.

Int I'm surprised he got that letter.

DM Well, he got huge chunks of it edited. But then that's when he said: Look, if you don't mind, if you write to me, just write about issues such as this, you know, so to steer clear of the contentious issues, you know. But then it stuck in my mind, so I had this person who I had never met, who knows me, who knows me when I was still about a year or two old, before he was arrested. But then, be that as it may, that's when I went to university. I don't know if you want me to talk about university.

Int Of course. When was that exactly, Dunstan?

DM I went to university 1980 to 1983.

Int Those were turbulent years.

DM Those were turbulent years for *that particular* university. The University of the North has a history amongst all the so-called black universities in South Africa, because the forerunners of the Black Consciousness movement, like Abraham **Onkgopotse Tiro** had gone there. You know, this is the guy who was killed by a letter bomb. So, because he'd been there, it was sort of inspirational to a lot of students, you know, so we...we had students who always looked out for opportunities to call out a strike, a sit-in, just to engage the authorities there. And throughout my tenure there, of all the four years, we never wrote our end of year exam at its allocated time, because we would have had a riot, would have had students dismissed, we would sit-in, we would say: We're not writing unless they are released. So you'd find that everything happened out of kilter, throughout, and sort of was an awakening in one's life about what was happening in South Africa. Something I would say, I don't know what to call it, either poetic or what, was when Robert Mugabe won in Zimbabwe, there was a small group of students that went around the campus singing and celebrating. The reason why a small group was Robert Mugabe was not an ANC ally but Nkomo was

and the huge chunk of students were Nkomo-ANC allied, and that was it, but you know it was very strange, how the divisions of the day, which still play themselves out today, were apparent, you know. So those are some of the things that I can talk about.

Int Did you...were you detained at all?

DM No, never.

Int You were lucky.

DM Well, I wasn't very upfront in my activism, you know. I'm very quiet generally so I would be the first one to run away when the cops raided the university I'd heard stories about what happens to people in prison, so I made sure, I don't want to be in prison and I don't want to lose that one opportunity I had of getting a degree, so people frowned upon that type of approach, to say, look, you must not have restraints when you're in the struggle but I've never been detained ever in my life.

Int So, when you finished your degree by 1983, and then your law degree, what happened?

DM That's when I had to go and work for the KaNgwane government to repay my loan. I worked for three years. I didn't work the final year because I realised I was stagnating, I was rusting, so to speak, and my friend here, Mpueleng, was telling me about what exciting things he was doing as a Fellow, when he finished here, and then as an articled clerk at Bell, Dewar & Hall, so I sort of got itchy feet and it was something like going against the grain then, in the government service, because everyone I spoke to discouraged me. They said: Look, you're going to have a good job, you're one of the few law graduates in the government service, and you'll go far. My father said: Go for your dream, you know, so to speak, so I came here, you know, in 1987, and I've never looked back.

Int Ok. So prior to your friend actually corresponding with you and telling you about the LRC, had you had any knowledge of the work of the LRC? Did you come across people like Arthur Chaskalson, George Bizos, prior to that?

DM Every kid in the township knows of Bizos in particular. I mean, every kid would knowingly say: I'll beat you up and I'll get Bizos to defend me. So he was very popular in the townships, we knew him. I'd never met them personally, I knew of them from university, you know. We would speak...as law students, we would have moot trials and you'd have people who would be, who would try and style themselves along the lines of Bizos or Chaskalson or Kentridge, as the leading lawyers in the country. So I'd never met them, you know, but I knew of them, and I was always in awe of them, so forth, these guys, you know...

- Int So what was it like coming to the LRC?
- DM As I say, it was a shock, because my supervisor then Mahomed Navsa, who's my colleague now was awesome so to speak.
- Int Right. I interviewed him yesterday.
- DM He was something out of this world that I'd never met. You know, he still, I think, exudes anger at how he grew up and why the system made it that he grew up like that, you know. His favourite story is that only black people accepted him. The Indian and coloured people and the whites, didn't want him, so the blacks accepted him, and that stuck. But he's an angry person. I think he still is, so when I had to work with this man, the first thing he said to me, he said: You must never forget your place. You're a darkie, you're black, you work three times, four times harder than anyone else. That way, you'll get recognition, you know? But he was a very good inspirator, you know.
- Int Did you work at the Hoek Street Clinic?
- DM No, no. I think when I came here; they had just closed it if I'm not mistaken.
- Int Oh, had they just closed it by the time you came?
- DM I think so, yes, when I came here, 1987.
- Int So you started really here at the LRC office in Johannesburg?
- DM I started really here. Not this building, I think they were still down there, Pritchard Street.
- Int So when you came in as a Fellow, what were some of the cases or issues you had to deal with?
- DM That's why I say it was a mind-blowing experience. Because that's where I realised that you could actually practice law to help poor people, and that in itself was very enriching for one's life. Because you know, as a young lawyer, you grow up, you say, look, I want to be a rich lawyer, I want to make money, I want to drive a flashy car. Coming here, I was in the Advice Centre Project as a fellow, where we used to visit advice offices. I mean, as a raw rookie, I mean the three years in the government didn't help me at all, didn't prepare me. So you walk into an advice office, you work with a lawyer, there's a queue of people sitting, and you ask them, they say: Well, they are waiting for you. What do I know, what will I tell them? Then you start interviewing them, you're hearing the personal experiences of how one is just looking for UIF payment or Workmen's Compensation, or unfair dismissal, and when you hear what the reasons were for the dismissal, it was shocking. All across the spectrum:

people assaulted by the police, all these were cases that one was taking. People who had cases against insurance companies, I mean one of the cases that I did, which I remember to this day, is a young man who was drunk, on Christmas Eve, he was stabbed to death, and the insurance company refused to pay because they say: Had he not been that drunk, he would not have succumbed to death that easily, so he had actually brought it upon himself. I mean, I fought that case, I was supported by the late Morris Zimmerman, and we got the Ombudsman's decision to say they must pay. It was a huge amount, you know. I actually tracked that case for about nine months. So it's a number of...that type of case, you know. I remember one case, which I picked up from the Dobsonville Advice Office, of a man who was dismissed because his son was an activist who was arrested with others whilst on some strike. When he came home and he heard this, he couldn't make headway of finding where his son was during the night, so in the morning, he 'phoned through his work to say that he was going to look for his son who was arrested. When he came to work a day later, the employer interviews him, says: What's wrong with your son? My son was part of the group of strikers who were doing this, and the employer said: So it means you are also bad for my company, and also fired the guy. So I mean it was an unfair dismissal claim but also an Unemployment Insurance Fund claim. At the time, the Unemployment Insurance Fund system was punitive. If you were dismissed, you know, you got lesser benefits. If you were dismissed, I mean, there was a number one, two and three. If you had a three in your blue card, you get very little. Because you were at fault, you were dismissed because of your own fault. So it's all those things that one came across, as a fellow.

Int Right. Dunstan, I'm wondering, you know, you came at the LRC at a time where they'd been established in 1979. In the eighties, early eighties, they had these key pass law cases, Rikhoto and Khomani. And then, Geoff Budlender in particular, and Arthur Chaskalson, were dealing with forced removal cases. I'm wondering how much of that cases you had to read up and know about, or whether when you arrived in the eighties, mid-eighties, you were dealing primarily with political stuff, detentions and such.

DM I dealt mostly with detentions, with Mahomed Navsa. I think Geoff's cases, the land removal cases and whatever, I wasn't involved in those at all. One would only be involved in the discussions, because we had discussion forums, say, one Friday afternoon, you'd sit as youngsters listening to Arthur, Geoff, Bizos, Charles Nupen, all those guys, you'd listen to them talk of their experiences in this case and this case. But because of my attachment to Mahomed (Navsa) and Thandi Orleyn, we dealt with the labour cases as well as detention cases. Do you remember the State of Emergency that was declared those years?

Int Eighty-six, eighty-seven?

DM Yes, I dealt with most of those cases. One case that stands out was the case of Goba Ndlovu, he was a very prominent Black Consciousness leader in the East Rand, in Tembisa. He was detained and we did that case. You know, I remember briefing the late Chief Justice Ismail Mohamed. He did that case, he argued it for us. So doing the

legwork, reading up all the cases, trying to find loopholes in the legislation to get people released, was very fascinating, so that was the bulk of my work.

Int Right, ok. I'm wondering in fact, what you think about..., being a fellow, coming through the fellowship program and also whether that in itself had some issues around race. You mentioned being under Judge Navsa, and him talking about you being a black person, and how you needed to work harder. I'm wondering whether in the LRC itself, you felt a sense of a racial dynamic?

DM Um, not that people were racist, no, no, no. I think the racial dynamic it got was because of the reputation of the LRC, how it interacts with the outside world. Outside lawyers, those who dealt with management work, who represented employers, knew that if there was a case from the LRC, it's either they settled or they fought all the way, because of the reputation of the LRC. So you'd have serious problems like the time we were going to serve papers at Wimpy in Krugersdorp. The employer wouldn't allow us to go in, he said: Unless you're coming in here to buy. If you're not coming in here to buy, we don't want you. So we said: Ok, we're coming to buy. As we got in, over the counter, now, what do you want? Then we explained to him: We're serving these Section 43 papers on you. And he said: You said you were coming to buy something. I said: Well, I've spoken to you, I've got a witness who can hear me talking to you that we're serving these papers. Then he chased us out and he took our papers and he threw them in the dustbin, you know. You see? But you had to run because we'd had a number of nasty experiences where fellows of the LRC would be set upon with dogs or some trumped up charges would be laid against them to say that, look, he's trespassing, I don't want him here, or something like that. So you just made sure that you're always on the safe side but you do whatever you had to do. So in terms of racism in the organisation itself, no.

Int Did you not feel like sort of excluded in terms of the white lawyers were given certain cases, you know, the black lawyers weren't given as much, was that not an issue for you?

DM It wasn't...I didn't see it. Let me tell you what happened. The arrangement...it was me, Lavery Modise and Fatima Laher those were the three fellows in 1987. We stayed in one office. The way the work...the work was allocated was, Mahomed (Navsa) was our supervisor, because he was the in-house counsel – if you got a brief, he knows that if he'd given me a brief in the morning the next brief goes to Fatima (Laher), the next one goes to Lavery (Modise).

Int Right, so there was a rotation system?

DM There was a rotation system. But all of us were black, there was no white fellow during our year, so it wasn't the...even dealing with the white lawyers, the Charles Nupens of this world, Steve Kahanovitz, we're still the best of friends. I never experienced any racism.

Int Fair enough. In terms of, in terms of looking at the eighties, what do you think are the reasons, given that it was the height of repression, height of resistance as well, what do you think were the reasons for the LRC's legal victories not being overturned? As well as the LRC offices themselves not being subjected to harassment and bannings, etc.

DM My reason (laughs) was branded controversial. I remember addressing a conference in Ghana and I made a statement like: Look, we had apartheid, but in a way, the apartheid government adhered to the rule of law, in a way, in a very strange way. Let me just explain this. The LRC, you know the LRC as a centre and the LRT, there was a good reason why you separated them. Now, what the LRC would do is the state attorney would watch. If the LRC was able to find a loophole in one piece of legislation or regulation or whatever, they would respect the court decision that ordered the detainee released or whatever. But then they would go and have an amendment done, to try and close that loophole. So even in the labour field, I remember we dealt with, I think, that case, now I think it was when I finished here, but one case that we dealt here, I think it's Amos Mlandu, one of the cases from the big mining strikes in 1987, we developed a law in terms of what goes into conciliation first or to the so called Section 43 interim relief part of it, you know. So the government of the day would watch what we do, right? And they would oppose it, they would field lawyers, but if they failed, as I've said, they would go back and study and say: Where did we fail? Is there a gap in the legislation or can we do things differently? So I would say, that's my view. The LRC survived from being closed down or searched or whatever because it was an organisation run according to how and why it was established legally, in terms of the legal framework, so there was nothing that would invite them to come and raid the LRC, and in terms of the work that the LRC was doing, was to uphold the rule of law in terms of what was happening at the time and that's my reason for it. I may be wrong but I think that's what it is, you know. Because, I mean, you had decisions that went against the apartheid government, they respected those decisions. They respected them so that's why...

Int Sure. Well, that's certainly something that comes across with lots of people, the strange irony about the rule of law within the apartheid structures, you know. So after 1987, what did you do, Dunstan? What was your reason to leave?

DM The other thing that I didn't mention was, if you were an LRC employee, whether a fellow or lawyer or whatever, the name LRC had a reputation. I mean, if the State attorney knew you were from the LRC, they knew they had to be on their guards. Because they were dealing with someone who was an activist but who was doing law efficiently to make sure that there's relief to poor people. So it gave one a reputation. When I applied for my articles, you know, I applied at Bowman's, Bowman Gilfillan. I'd had a case against John Brand, who's one of the most well known labour attorneys in South Africa. I sued Wits University for dismissing a worker who was ill, Granville Mancini, I still remember him, and Wits thought he was small fry and who is he to challenge them, but when they realised that, look, the going was tough, so the matter went to John Brand. He 'phoned. John Brand was a scary individual to deal with, he's very aggressive, he's got a big booming voice, so when the call came through,

Mahomed (Navsa) said to me: You asked for it, there it is. There's a 'phone call for you. John Brand tried to intimidate me into withdrawing that case. I refused.

Int Is he a judge now?

DM John? No, he's not a judge. He never became a judge. He's still, I think he's still a consultant at Bowman Gilfillan. When he realised he couldn't intimidate me, he tried to sort of challenge me on the legal principles at play. He realised I had a good case, I wasn't budging. Then I mean, he said: Well, see you in court. I mean that was his parting shot. But what then happened is that they settled very handsomely for my client, but I applied for articles at his firm and I was accepted within five minutes of going into that interview. So having been at the LRC gave one an edge, because they knew that you can handle a practice, you can handle anything, any situation, and they wanted you. And the LRC has maintained that tradition, that's the one thing. But the other thing is, coming here sort of fashioned my outlook to what I want to do with my law degree, and since then, I never aspired to be a commercial lawyer but just to practise law for the benefit of the poor people.

Int So you did your articles at Bowman Gilfillan?

DM At Bowman's in 1988, '89, and then I passed the Board exam right away, I was offered PA ship, I became a PA. Within a year they made me an associate partner.

Int At Bowman's?

DM At Bowman Gilfillan, ja. But one was a bit restrained in what I was doing, because I was in the union section, litigation department but union section. But one was always having a conflict situation because Bowman's also had a management section. They acted for all the mines, the big mines, and we had union clients, you know, in the mines. So one had to check all the time, do we have a conflict or not. If there was a conflict, you'd try and work out why there was no conflict and to do the case, you know. Because you always constantly had to justify to your clients, why is your firm suing me and on the other hand, you say you're my lawyer, you know? At the end of the day, in 1993, I couldn't take it any longer so I left Bowman's to establish my own firm and to continue doing the work I wanted to do, you know. So that's basically it. Bowman's, had I stuck it out there, I would've been rich today, I know that. Because what they wanted to do, they took a policy decision sometime in 1992, to ditch the union work. Because the ICFTU, which was funding unions, had given notice that they were going to close their funding, and Bowman's realised that, look, that was going to be a lost cause. They wanted to ditch it but they didn't want to ditch the lawyers like me, doing it, so they tried to give us good commercial work but on the other hand, continue suing our clients. So I then decided, no look, I don't want it, so I left. Started my own practice, where I continued.

Int Right. So, this was in 1989?

DM No, 1989 is when I finished, so 1990. I was PA in '91, 92, associate partner, then end of '92 I left to start my own firm, until '97, that's when I became a judge in the Labour Court.

Int And you've been there since?

DM I was in the Labour Court until 2000, or end of '99, then I was appointed to the Johannesburg High Court, I was in the High Court for five years...just under five years, at the beginning of 2003 I was invited to act in the Supreme Court of Appeal. I acted for nearly a year, then I was approached to make myself available, so then I availed myself and I was appointed there in April 2005.

Int So the Appeals Court.

DM That's where I am.

Int Right, ok. And you're with Mahomed Navsa and Azhar Cachalia?

DM Cachalia came after me, ja.

Int So you are there with LRC people?

DM Ja, But I think Azhar (Cachalia) had become a fellow here long before I became a fellow. But one thing that I need to mention is, I'm also Chair of the Legal Aid Board of South Africa. And I'm happy at the work I'm doing there. This is my sixth year as Chair and the Minister has extended it for another three years, despite my plea that it's too much to do. But that's work I do because of the work and my experiences at the LRC, you know, to be always on the forefront, to advance the cause of those who need assistance, legal assistance, but can't afford it.

Int I want to come back to that, and thank you for mentioning that. So in 1987 you'd worked at the LRC; you went on to do articles. How did your experiences at the LRC hold you in stead for the work you did as an articulated clerk as well as...as a PA and then as an attorney?

DM You know, that's why I say: You know, the LRC reputation and the experience you gain here, is invaluable. When I walked in at Bowman's, Graham Damant, who was my supervisor, he...and John Brand, were in charge of the section, he...the first day he said: Look, these are the cases. I said: Graham, you know, you don't have to worry about how to handle a case, I've done this. He says: Really? I said: Ja. So he wanted to test me, so he said: There are a couple of files in that office, which is your office, go through them and tell me what has to be done the next day. I went to see him that afternoon. The same afternoon, I said: That one, you need to file the following

pleadings; on that one, the following weakness, on that one I think we're weak on the following...so it was invaluable. But it intimidated the other articulated clerks, you know. When I started at Bowman's, the only blacks of the contingent of twelve articulated clerks, was me and Patrice Motsepe. You know Patrice the billionaire? He's a billionaire now. We started articles together. The only two blacks, the others were all white. And they were all supported by the big commercial partners. But as an articulated clerk, I smashed my twenty four thousand rands per annum budget within three months. When articulated clerks there would struggle the whole year and not even make it. And the reason is simple. I was able to have a practice on my own, unsupervised, and get results. That came from the experience I got from the LRC.

Int What is it about that experience? What particularities do you think that it equipped you with?

DM It gives you confidence, to start with. I mean, to start with, if you know what you're doing, you've got to know, and that's Mahomed (Navsa). He says: You get a matter. You've got to persuade yourself you know what you're doing. What are the issues? What are the legal principles at stake? And sometimes it also equipped you to take a case that you knew was a clear loser, but it's a case that you know that it has some value, nuisance value to the other side, and they'll throw something your way for the clients. So that's basically it, you know. You knew, you'd get a case, say look, what is involved in this case and what am I going to do? And you'd go out and do it.

Int Ok, fair enough.

DM I mean I would be busy and they would have, I remember a guy called Peter Buirski, he's now an advocate, we shared an office. He was very uncomfortable sharing an office with a black person, and I could see it. But I could see that he was threatened, he was twiddling his thumbs, he had no work...

Int Was this at Bowman's?

DM Ja, he had no work. And he would spend most of his time outside the office. When he wanted to make calls, he would get out of the office or he would wait for me to go out then he'd make his calls. He was clearly uncomfortable, he'd never been that close for a long time with a black person. And I realized it, then I spoke to him about it openly. I said: Look, Peter, I realize you have the following problem. Look, you can deny it if you want to but I see it. Look, there's more for us to do here, and I started involving him in my work, because he was bored. I mean, you have that as articulated clerks. Some principals don't look after you in terms of work, in terms of exposure. And he valued it and we're now the best of friends, the two of us. I had other clerks, when I was a PA at Bowman's, I could instruct clerks and most of the clerks were white. And I know there's one guy called Costa, I can't remember his surname, who resented receiving instructions from a black PA, and he'd find all the reasons not to do the work. And Graham Damant wanted me to get him fired for that. I said: Look, I'm not...I don't want to accelerate his own downfall. So those were the dynamics, but I

was able to hold my own and actually do what I wanted to do because of the experience I got here.

Int Right, clearly. So when you started your own practice, and then thereafter you got called to be a judge?

DM I resisted.

Int Really? Why is that?

DM Um, 1993, '94, that's when I started my practice. '95, '96, they were about to establish a Labour Court and I was known in the country as one of the black people who did very good work on the labour front for workers. So they were looking for people to be the first judges of that court. I was approached and I sort of resisted it, because, look, reality is you are a young lawyer, you start a young family, I think I had a child or two...I think I had two at that time, you have debt, the bonds and whatever, you couldn't service those with a judge's salary, you know. Even if you didn't make much as an attorney, but at least your options were wide open, you know. So that's why I resisted it, you know. But at the end of the day, my wife said to me: You know, look, a judge's life is more stable, the income is stable, so go for it, you know. So that's when I went for it.

Int Ok. So...

DM '97.

Int '97, ok. So when you were here at the LRC, it was the eighties, still apartheid, and the LRC was taking on cases that were very much aligned with the ANC's or anti-apartheid movement as such, and of course there were people like George Bizos and Arthur Chaskalson who were fighting political trials. Come the early '90s, the ANC comes into power, then you see the LRC then having to take on cases that are very much against the government, which is now the ANC. I'm wondering what your sense is about that, and the kind of ability to adapt to new circumstances that the LRC had to then undertake.

DM Well, I think the first thing that one must not lose sight of is it's true that the cases... one may say these were cases aligned to the ANC programmes, you know, but it's not only the ANC. I can tell you that we also serviced very Black Consciousness minded advice offices. I mean the case I mentioned, the detainee Goba Ndlovu that was a Black Consciousness-led case, from the advice office. Bongzi Mkhabela who sits as one of the trustees comes from that mould, the Black Consciousness mould. So you had these competing political undercurrents in the work we were doing, so it was not only ANC work, you know. So it was almost...I think less pronounced was the PAC, right, because they were not very active in advice office circles, I think, like the ANC and the Black Consciousness people inside the country. And then when democracy

dawned in '95, '96, the realization...I remember, here, I was not a trustee yet, but I had relationships with the people who were here, to say, look...the discussion was, look, we're now going to have a democratically elected government but the cases, the problems that we were fighting to resolve are not going to go away overnight. Do we continue doing it? Do we start fighting the people we viewed as our heroes? And the overwhelming view was, so what? The plight of the vulnerable people remains the same. As long as it remains the same, there's every justifiable reason for us to continue doing the work. I mean, my former partner, Lavery (Modise), when I started my firm, he came to join me, he was from the LRC. You know, we served fellowship together, but then he came back to work here as an attorney, when I went to Bowman's and started my own firm. So I was very much in touch with the thinking in the organisation, and there was no problem, from what I could see, from anyone who was here, in continuing to do the work, even now against the democratically elected government.

Int I want to ask you about being a trustee. How did that come about, trustee of the LRC?

DM I think one reality that one has to face about the transition into democracy, was the cause of funding, the work of the LRC, sort of in the funders' eyes, became diminished. They said: Look, you now have democracy, you have all the building blocks in place to get things right, so we'll look for other worthy causes. Now, it also happened in the practising ranks, I would say, the work I did, when I left Bowman's, to continue doing work for workers, was I couldn't bring myself to the reality of having to fight, to litigate against workers, if you know what I mean. You know, so to continue doing work for workers, I had to have my own establishment. So unfortunately, many other lawyers said: Look, we now have democracy I can now do whatever work I want to do. Unfortunately, that affected a lot of people, so the numbers of people who still wanted to fight the type of cases we were doing, sort of diminished. The role of the public interest lawyers so to speak, sort of diminished, and I think it became a challenge to the LRC, because even there, they would train good fellows. The Law Society allowed the LRC to take articled clerks, but invariably those clerks would be lost to the commercial world, you know. So as a trustee, I was identified as one of those people whose heart was still in the right place, so to speak. They said: Look, there's Dunstan, approach him. And I agreed.

Int I want to piggyback onto that response of yours about the funding. The argument that I hear as well is that the LRC has been too dependent on external sources of funding and there hasn't been that much internal sources of funding, so within South Africa, the legal fraternity, corporate world, etc. What's your sense of that as an issue?

DM It is true. I've been to the US with Janet (Love) on those two trips, so I know... they've raised it with us. The culture of giving in South Africa is seriously problematic. I start with myself. I've never say look I do a lot of work for the LRC, but that doesn't translate into money, you know. And the realisation hits you when you sit as a trustee, say, look, there are lawyers like me who are in the organisation whose salaries have to be paid, now where does the money come from? And when you look at the Cyril Ramaphosa's of this world, people who were on the struggle front who are now billionaires, you look at what they give, I mean the guy who's a

billionaire giving five thousand rands per annum to the LRC – it's an insult. So it's a challenge. I look at it that way. It's a challenge for us to sort of speak to that group, to say guys, there's good work that can enable you to have a good night's sleep, when you know that organisations like this continue to work, so I look at it as a challenge. And actually, me and Janet (Love) have a number of meetings scheduled where we need to speak and see who we target, starting from fellows and attorneys from the LRC, you know, and then going to the broader public. But it's true, we are too dependent on external funding because it's difficult to raise our own funding, internally.

Int I'm wondering as well, Dunstan, in terms of... you've mentioned the fact that the opportunities are so great in South Africa, post-apartheid. I'm wondering for lawyers, the LRC may have difficulty attracting lawyers, let alone black lawyers because the salaries cannot possibly match those in private practice or even in large firms?

DM It's true. I'm at the Legal Aid Board: we have the same problem. We at the Legal Aid Board, like the LRC, have funding that we set aside to train young lawyers, because you know, for black lawyers, it's also a problem getting access to the profession it's white firms that attract the most articulated clerks, or they call them candidate attorneys now. So it's difficult for blacks to get access to those opportunities. So in the Legal Aid Board we said: Let's have this funding just to train these youngsters, but when you expose them to the experiences that they will come across, you hope that some of them will sort of say, look, that's what I want to do for the rest of my life, you know. But reality is reality. When democracy dawned, you start seeing people you were at 'varsity with, being millionaires, being in these big firms where they have access to lucrative work. Reality is reality as I say. You tend to lose most of your people to that, to that sector. It's happening, but we're contending. You will always have those who will take up the opportunities. Unfortunately, most of the people who come are those who fail there, and the quality is not the greatest, you know.

Int Right. One of the things as well, attached to that, is that certainly from the time you were a fellow, you've had people like Mahomed Navsa, then you had an upper layer, you had... Charles Nupen and Karel Tip, then you had an upper layer, where you had people like Arthur Chaskalson and George Bizos. And so I'm wondering whether now currently, the situation is that where you have the young people coming in, and whether there's this middle layer of lawyers who're going to supervise them thoroughly, and then there's also this upper layer of mentoring that happens. Is that structure still available within the LRC?

DM It has diminished in a way. But I think you have a very strong middle to upper layer in the form of the Steven Kahanovitz's of this world...

Int In the Cape Town office...

DM Ja, who are still here. Who else? A number of them have left. Vincent Saldanha is still here. There's few of them but they are still there. I think each office has them. Here, you have George (Bizos), but he's now less and less involved. He's getting old, you

know, in age. So it's true, it's happening. Those layers have been diminished in a way. But they are still there. There are people who have the institutional memory and capacity to continue doing the work, but you're right, it's no longer as it was then.

Int The other issue that I want to talk about is the fact that there's a sense perhaps that the LRC either has lost its focus or it hasn't really focused on its core strengths and so when you're referring people to the LRC, it's not clear what exactly the LRC does anymore. I mean, under apartheid, it was very clear. Do you get that sense?

DM I've heard that. When I had my own practice, you had these NGOs that referred work, and they are active in the communities, that referred work and you'd...I remember having a guy, I think, called Lester Pigott, I think that's his name, his NGO dealt with people who'd been assaulted by the security forces. He was referred to me by the LRC, because at that time, the school of thought was that we had diminished funding, we've got to be selective in what we do, right? This type of case, because lawyers can do it on spec, you know, therefore it would go to lawyers. So for some time, there was that sort of sense, that look, the LRC may have lost its bearings in terms of what work it should continue doing or not do. But I think having been at the Trust and in Trust meetings, where policy shifts were discussed, I think, as a trustee, I don't think there's a problem as to what work the LRC does, you know. You've had...we've had some hard liners, I know in Durban, we had one, who resented the fact that he couldn't do some of the work he loved doing, because of the constraints in terms of funding, you know. But I think as we speak now, it's no longer like that. At some point, yes, I think one got that sense, that the LRC has sort of lost its way as to what work it does.

Int What is the focus now?

DM The focus now, I know, is still...I think it's land, the environment, women and children, I think that's the focal point of the work.

Int What do you do when there are other public interest law organisations popping up as such, for example, there's the Centre for Family Law, etc. who do this kind of work. Is it not in a way more prudent to then refer people there and then let the LRC focus on its key strengths, which is land for example?

DM Well, I think that's what the LRC does. It co-operates with these others, just like with us, the Legal Aid Board, they would pick up a case, they know, we...our mandate is to do those cases, the Legal Aid Board, but we don't have the capacity to do it, but then they know they can approach us for the funding, to continue doing that work, but if they know there's a specialist organisation, like this organisation that does work for women, you know, and they have a case like that, they know that they would speak to them and say: Look, we have this case, would you be interested? We would play a supporting role of sorts. I mean, that Aids case that went to the Con Court, the LRC was involved.

Int TAC?

- DM Ja, TAC. I don't think it was the LRC doing the whole case, but parts of the case. So I think there are those co-operative agreements and arrangements that the LRC has, you know, to make sure that the work happens, if not here, but elsewhere.
- Int In terms of being a trustee, what are the core issues that you feel are areas of interest and concern?
- DM Well, concern is the problem that every Trust meeting is dominated by funds.
- Int Funding issues?
- DM Funding issues. And it's disconcerting. I mean, a year or so ago, I actually said: Look, I think I'm wasting my time here, because I come to a Trust meeting to talk about funding issues, where I want to talk about serious policy issues about the work we do, about what's happening in government hospitals, there's negligence, who's doing that case or those cases? You know, we have little time to discuss those issues. But you know, the other sense is, look, how do you direct an organisation to do those cases when the funding is not there? You know, you've got to get that right. So it's competing challenges. So I would, I would encapsulate it as that, as those two issues. There's lots to be done, you know. The pension cases, grant cases in the Eastern Cape, the LRC has been at the forefront in exposing government, in getting those orders against government ministers to comply, but it's all...it's a lot of it, you know, it's a lot of it.
- Int Dunstan, I'm wondering in terms of looking back on your experiences, the LRC in particular and then being a trustee, what is your sense in terms of your own personal and professional development of the impact of the LRC, first as a fellow and now subsequently as a trustee?
- DM I think it has equipped me as a judge, to let that experience sort of give me the other insight into people's lives, those cases that come to us, you know. I did a case as a judge here...I'm just going to say this to you.
- Int Sure.
- DM Geoff Budlender was doing a case. He was arguing it for the LRC and I was the judge. This is a case that had to do with some squatters. Some families had been squatting for 20 years on a schoolyard, now...
- Int Twenty years?
- DM Ja, 20 years. That's when they started moving in...and the government knew that they couldn't just evict them into nothing, because the law had been established that you

can't evict them unless you have alternative accommodation for them. So the case was...the government said: We've got alternative accommodation, it's about 30 kilometres away. They were saying: We don't want it, we have jobs here, we've got schools here. You know, you take us there; you build in the cost structure, the travelling to work and to school, health facilities and stuff like that. So I had to juggle. But you see, Geoff...I ruled against Geoff, and that decision survived on appeal, so to speak, but Geoff when he speaks about that case, he doesn't mention me but he says: You know, it is comforting as counsel fighting for poor people when you have judges who know what you are talking about. So I think it has equipped me to give you that side. I have colleagues who have no inkling about that side of life, at all, who decide cases just cold.

Int It must be very difficult, particularly given that you worked so closely at the LRC and you know, you've had this first hand experience as well.

DM But you see, I think when I decided that case, I knew that people would be disappointed, they'd say, but he should understand better. But you apply the law, but you have an advantage over someone else who hasn't been there. I mean, who hasn't been there and who doesn't know what the plight of those people is, you know, what you are exposing them to if you rule in this fashion or in this fashion. So I think it has strengthened me, it has empowered me, as I say, compared to other colleagues who just decide cases coldly. Some of my colleagues don't agonise on these cases, they've simply said: Boom boom boom, that's it. But I bring my experience to bear on these things and I've had cases where I know I've swayed my colleagues into going a different route, where they were going a different route, by telling them, say: Look, these are the facts but let's forget, these are the other issues, these are the other issues, and then, you know, they follow that. So I think it has empowered me.

Int You mentioned that during the eighties certainly, the LRC had a great standing in the legal world as well as in South Africa. And I'm wondering, I get the sense that when I interview people abroad, they have this really, really kind of strong sense about how important the LRC is, and yet in South Africa it seems perhaps, and I'd like to check this with you, whether there is that same level of recognition and kudos attached to this organisation?

DM That recognition has waned unfortunately, inside the country. Perhaps that's what also informs the funding problem internally. It has waned...

Int What do you attribute the waning to?

DM I think it's, look, the overwhelming sense from people to say: Look, you had your role to play, you've played it. Perhaps it's time to move on, you know. But when you argue with those people and say: But the problems that the LRC was fighting are still there, so you can't expect the LRC to close shop, you know. It's like...it's like in a labour situation where you know that in a retrenchment, you can't retrench, you can't as a judge say you agree with the retrenchment decision because technological advancement says this is the way to go, because you know what the impact is on

people. It's like that, you're fighting a losing battle, so to speak, you know. Because people say: Yeah, but so what, you know. It's disconcerting, I must say, because I come across people who say: Look, come on man, the time for the LRC has come and gone.

Int Do you think that's the case?

DM No, I don't. I wouldn't be here, I wouldn't be a trustee, I wouldn't be going to the States, to the chagrin of my family, to raise funds for the LRC. I believe the LRC still has a big role to play.

Int What do you think...what will the future hold, in terms of cases and areas of law that the LRC will have to deal with in the future?

DM I think because of the diminished funding, their impact will also diminish. They will continue doing the work they do, they will be more selective...even more selective, you know, but the impact thereof, I mean, it's worrying. In the Eastern Cape, during the apartheid years, if you had an order against a government department, it would be complied with and you would not have that problem occurring again. But here, you have an order, they don't respect it. You have the same problem cropping up in another province. So it's worrying, I think it's, it's the diminishing funding, but it's also the attitude of those in power, you know, how much do they respect court orders. So it's, I think it's a bigger problem than just the LRC, and it worries me.

Int Ok. Dunstan, I've asked you a range of questions and I'm wondering whether you have issues and areas that you feel I've neglected and that you'd like to actually include in this LRC Oral History interview?

DM Well, I think, I know when I went to the US with Janet this last time, and Harvey had arranged a number of well-to-do people, well-meaning but wealthy people who are all potential donors to the LRC, like asking me, what is it that I have to say, you know. Janet is very good at selling the LRC but you know what sticks in my head, and that's what I said when I was invited to speak there, was to say: Look, I think the work of the LRC in creating public interest lawyers and in creating public interest law awareness is invaluable. And it's something that I would like to see continue, you know. When you talk about money, funding, and you talk about public interest law, it appears that there's a disjuncture, but I think it's a very important thing, you know. Even, I mean, the States, the United States of America, you have public interest lawyers being ridiculed, being spoken of in many terms. I mean, John Grisham has written a novel: King of Torts, I think that's the one, where he speaks about this public interest lawyer who was going to make it in this one case, but this is how it's been portrayed, and I think it's unfortunate, because this is a sector that represents a huge sector of society that has no access to necessary funds that can give hope to that sector, and in a way, can help the maintenance of the rule of law.

Int Right. I'm wondering what are the stories that remain to be told?

DM From me?

Int Yes, you know, you've been here, you've had a long association with people. I'm wondering what are the stories that remain to be told, you know, stories about Arthur Chaskalson, George Bizos, Mahomed Navsa...people you came into contact with?

DM Look, there's a lot I can say about people on the personal front. I mean, one favourite story that they like telling about me, is when I came here, I was from the government sector, where you had serious authoritarian Afrikaans supervisors. When he comes to your office, you stand up; you don't take off your jacket. So I came with that tradition. I mean, Mahomed (Navsa) had to fight with me to take off my jacket. And I would never have said to Arthur: Arthur, I'd say: Mr Chaskalson, Mr Budlender. And I would embarrass them, it was difficult for me. But you see, that's how informal people were with each other. And it actually took Geoff (Budlender) to actually... meeting me in the Gents and saying: Look, by the way, my name is Geoff, you know. (Laughs) There are a lot of other stories, lots of other stories I can tell you. But I don't know if I want to do that. But I mean Arthur (Chaskalson); I always looked forward to working with him. We'd get a brief...there's one case that we won with Mahomed (Navsa), a civil claim of a guy who was shot, his arm was shot off by South African soldiers in the township, and we worked with Arthur, just in preparing for trial, looking at the brief, looking at the cases. *Gots* (Afrikaans slang for God), it was invaluable. You sit with this man, and you hear him speak, and he'll say: Have you looked at that? Have you considered that? You know, in his own sort of quiet way, it was so invaluable. I miss those things, you know. In a sense that's why the youngsters now miss those things, you know? Oh *gots*, I don't know. (Laughs) Nothing can replace it.

Int Right. How about George Bizos, did you work with him?

DM George not much. I think when I was here, he only did selected cases, he was not based in the office. He was, he had chambers there, you know. I mean, the first time I had to go and see Ismail Mohamed, his anger and his tongue was legendary.

Int Ismail Mohamed? Really?

DM Ja, so you hear about him, you said: I don't want to come within 20 metres of this man, you know? How strict he was. I mean, I remember that Goba Ndlovu brief, Mahomed (Navsa) said: You take it to him. I said: But I'm scared. And Mahomed said: You take it to him. And I went there. And I mean, because you say, he'll look at the brief, he'll say: Why haven't you done this? Why haven't you done this? Because that's how thorough he was. We knew about these things, you know? I mean, I went there, I knocked, and a voice says: Come in. He says: Ja? Without looking back. I said: I've got this brief from the LRC. He says: Put it there. Thank you very much. And I left, I literally ran out of his chambers, but it's not malicious, its because you've heard so much about how meticulous the man is, you know?

Int Dunstan, thank you very much for your time and for a very enjoyable Oral History interview.

DM Thank you very much for giving me the slot.

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